IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

O.P.No.26517 of 1999(S)

R.A.NO.69(COCH)/98 IN I.T.A.400/COCH/1996 OF INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH

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PETITIONER:

THE COMMISSIONER OF INCOME-TAX,
COCHIN.

BY STANDING COUNSEL, GOVT. OF INDIA (TAXES)
SRI.P.K.R.MENON(SR.) &
SRI.GEORGE K. GEORGE

RESPONDENTS:
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1. SMT.K.J.MARYKUTTY, KOITHARA HOUSE,
KADAVANTHRA, COCHIN. (DIED)

ADDL. 2. SEBI JOSEPH, LEGAL HEIR AND EXECUTOR,
KOITHARA HOUSE (WEST), KOITHARA ROAD,
KOCHUKADAVANTHARA, KOCHI-36.

3. SABU JOSEPH, KOITHARA HOUSE (WEST)
KOITHARA ROAD, KOCHUKADAVANTHARA, KOCHI-36.

4. SAJAN JOSEPH, KOITHARA HOUSE (WEST)
KOITHARA ROAD, KOCHUKADAVANTHARA, KOCHI-36.

5. SINDHU JOSEPH, KOITHARA HOUSE (WEST)
KOITHARA ROAD, KOCHUKADAVANTHARA, KOCHI-36.

(ADDL.RESPONDENTS 2 TO 5 ARE IMPLEADED AS PER ORDER DATED 31.7.2007 IN I.A.NO.10066/2007)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

O.P.No.26517 of 1999-S

Dated, this the 31st day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

I.A.No.10066 of 2007, the application for impleading the legal heirs of deceased 1st respondent-assessee is allowed.

(2) The Revenue has filed this Original Petition under Section 256(2) of the Income Tax Act, 1961 ('Act' for short), inter alia, requesting us to direct the Income Tax Appellate Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.400/Coch)/1996 dated 27th October, 1997 for the assessment year 1985-86. The questions of law raised by the Revenue are as under:

> "1. Whether, on the facts and in the circumstances of the case is not the order sheet entry "as such the proceedings initiated are hereby dropped" an order?
>
> 2. Whether, on the facts and in the circumstances of the case and the Commissioner of Income-tax being empowered to call for and examine the records of any proceedings under the Act, the Tribunal is right in law in annulling the revisional order setting aside the order "dropped proceedings"?

(3) The Tribunal has rejected the appeal filed by the Revenue. The Revenue had filed an application under Section 256(1) of the Act requesting the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.400/Coch)/1996 for the assessment year 1985-86. The Tribunal has rejected the application.

(4) We have carefully perused the order passed by the Tribunal and also the questions of law raised by the Revenue for consideration and decision by this Court. In our opinion, the questions of law raised by the

Revenue require consideration by this Court. Therefore, a direction requires to be issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.400/Coch)/1996 dated 27th October, 1997 for the assessment year 1985-86.

(5) Accordingly, the following:

Order

i) The petition is allowed.

ii) A direction is issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.400/Coch)/1996 dated 27th October, 1997 for the assessment year 1985-86 for consideration and decision by this Court, as expeditiously as possible.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-